Before the
Administrative Hearing Commission
State of Missouri

DIRECTOR, DEPARTMENT OF PUBLIC SAFETY,	)	
Petitioner,	)	
vs.	)	No. 13-1146 PO
HENRIETTA ARNOLD,	)	
Respondent.	)	

DECISION

Petitioner Director of the Department of Public Safety has cause to discipline the peace officer license of Respondent Henrietta Arnold, because she committed three criminal offenses, and committed acts while on active duty or under color law, involving moral turpitude.

Procedure

The Director filed a complaint on June 24, 2013, seeking to discipline Ms. Arnold's peace officer license. Ms. Arnold, who is representing herself in these proceedings, filed her answer on July 24, 2013.

The Director filed a motion for summary decision on August 29, 2013, and Ms. Arnold filed her response on September 13, 2013. We issued an order on October 3, 2013, denying the Director's motion without prejudice.

The Director filed a second motion for summary decision on October 11, 2013. We notified Ms. Arnold that she should file any response to the second motion by November 1, 2013, and could incorporate into her response, by reference, any argument or other materials she had previously filed in this case. Ms. Arnold filed nothing. We will nevertheless treat Ms. Arnold's suggestions in opposition to the Director's original motion for summary decision as her suggestions in opposition to the second one.

We may grant a motion for summary decision when a party establishes facts entitling any party to a favorable decision and no party genuinely disputes such facts. 1 CSR 15-3.446(6)(A).[1] Facts are established by admissible evidence, such as the pleading of the adverse party, affidavit, or other evidence admissible under the law. 1 CSR 15-3.446(6)(B). The findings of fact below are based on Ms. Arnold's answer, and affidavits and authenticated business records submitted by the Director with his motion for summary decision.

We pause to note that this evidence includes the findings of fact from a prior administrative proceeding brought against Ms. Arnold by her former employer. The Director does not attempt to "re-prove" these facts through the original source or other evidence, and instead argues that Ms. Arnold is collaterally estopped from disputing these facts. As discussed in the Conclusions of Law section below, we agree.

Findings of Fact

Background

1. Henrietta Arnold is licensed as a peace officer by the Director of the Department of Public Safety. Her license was current and active at all times relevant to this case.

[1] All references to "CSR" are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

2. Ms. Arnold was employed as a lieutenant with the St. Louis Metropolitan Police Department (the Police Department) at all times relevant to this case.

3. Officer Susie Lorthridge was a police officer with the Police Department and under the supervision of Ms. Arnold and Sgt. Jason Alberts at all times relevant to this case.

4. Ms. Arnold resided at 721 Lookaway Court in St. Louis County, Missouri at all times relevant to this case.

5. Lookaway Court ends in a cul-de-sac containing four houses, including Ms. Arnold's house. All of the houses in the cul-de-sac are located in St. Louis County.

6. Immediately to the east of Ms. Arnold's house is a vacant, undeveloped lot located in the city limits of the City of St. Louis. The lot is owned and controlled by Riverway Development, LLC.

7. Dan Mintz was Riverway Development's developer and managing member, and the primary contact for Riverway Development. In July 2010, Mr. Mintz lived at 725 Lookaway Court, in the house immediately next to Ms. Arnold's.

8. Ms. Arnold has never been employed by, or acted as the agent of, Riverway Development, nor has she ever had any other relationship with Riverway Development.

9. In July 2010, Jonathan Arnold, Ms. Arnold's son, was 18 years old and lived with her.

10. Jonathan had a key to the house and Ms. Arnold knew he invited friends over.

11. S.L., who was 17 years old, was a female friend of Jonathan's. Prior to July 3, 2010, she had visited Ms. Arnold's house at least 10 times at Jonathan's invitation, and S.L. had met Ms. Arnold at least three times.

The July 3, 2010 Arrest of S.L.

12. At Jonathan's invitation, S.L. spent the night at Ms. Arnold's house on July 2, 2010 and was there the next day, July 3, 2010.

13. On July 3, 2010, Ms. Arnold ordered Officer Susie Lorthridge "out of service" and directed Officer Lorthridge to take her (Ms. Arnold) to her home at 721 Lookaway Court.

14. When Ms. Arnold got home, she found S.L. in Jonathan's bedroom. That was the place Ms. Arnold first encountered S.L. that day, not elsewhere in the neighborhood.

15. Ms. Arnold assumed S.L. was visiting Jonathan and was angry that S.L. was there.

16. Jonathan and S.L. both contacted friends to pick up S.L. and take her home. S.L. believed her ride was coming.

17. As S.L. exited Ms. Arnold's home to wait for her ride, she encountered Officer Lorthridge at the front door. Officer Lorthridge asked S.L. why she was in Ms. Arnold's house.

18. S.L. told Officer Lorthridge that Jonathan was her boyfriend and he had invited her (S.L.) to the house.

19. Ms. Arnold and Officer Lorthridge directed S.L. to wait on the porch, which S.L. did. S.L. was not permitted to leave.

20. S.L. was directed by Officer Lorthridge to give the officer her (S.L.'s) parents' phone number or S.L. would go to jail. S.L. gave Officer Lorthridge her mother's cell phone number, her father's cell phone number, her parents' home number, and her grandparents' home number.

21. S.L. was threatened again with jail for trespassing on Ms. Arnold's property if her parents did not answer the phone or her ride did not arrive within five minutes.

22. Officer Lorthridge then arrested S.L. and placed her in handcuffs.

23. Ms. Arnold never told Officer Lorthridge that Jonathan had invited S.L. to Ms. Arnold's house.

24. Ms. Arnold was aware that S.L. was being arrested and approved it. Ms. Arnold did nothing to oppose or object to S.L.'s arrest, and never directed Officer Lorthridge to release S.L.

25. Ms. Arnold did not tell Officer Lorthridge that Ms. Arnold's house is located in St. Louis County, Missouri, not in the City of St. Louis, Missouri, even though Ms. Arnold was aware of those facts.

26. Ms. Arnold and Officer Lorthridge placed S.L. in their police car.

27. In the police car, S.L. testified,

> [Ms. Arnold said that] I'm a white bitch and that she can't believe that I brainwashed her son, and that I had street smarts and he doesn't, and that if it was up to her she would have slit my throat already. I'm lucky that another police officer was there or she would have beat my ass[.]

28. On the way to the police station, Ms. Arnold and Officer Lorthridge discussed that they were out of their jurisdiction.

29. Ms. Arnold thought that she would get in trouble if she arrested S.L.

The Police Report

30. Following S.L.'s arrest, Ms. Arnold gave Officer Lorthridge a piece of paper with information to assist the officer in preparing the police report.

31. Ms. Arnold gave Officer Lorthridge the name of the developer to be included as the victim of the trespass. She also gave Officer Lorthridge the name and address of the company.

32. Ms. Arnold provided Officer Lorthridge with the address "719" Lookaway Court, an address that does not exist, to be listed as the location of the arrest, not 721 Lookaway Court, Ms. Arnold's address and the true location.

33. Ms. Arnold did not give Officer Lorthridge the name of Dan Mintz, the only person whom Ms. Arnold knew from Riverway Development, and who was also her next-door neighbor.

34. Police Report No. 10-037247, relating to S.L.'s arrest, included or omitted the following information:

a. The location of S.L.'s arrest was listed as "Riverview Dr/Spring Garden Dr., St. Louis City, MO 63137";

b. S.L. was described as "extremely unkempt" and "disoriented";

c. Ms. Arnold's knowledge about and relationship to S.L. was omitted;

d. A "Richard Delaney" was listed as a witness and an employee of Riverway Development;

e. The management of Riverway Development was identified as having complained about trespassing;

f. The location of the arrest was described as within the City of St. Louis;

g. The report omitted mention of Ms. Arnold as the supervisor at the scene of S.L.'s arrest;

h. The report omitted mention of Ms. Arnold as an assisting officer at the arrest;

i. The report indicated that "No Trespassing" signs were posted or present at or near the location of the arrest;

j. S.L.'s arrest was described as having been at the instigation or direction of agents or employees of Riverway Development; and

k. Ms. Arnold's son Jonathan was not mentioned in the report.

35. Richard Delaney, who is now deceased, was not an employee of Riverway Development and had no relationship to the business. He had never been to St. Louis, other than one time, when he passed through in 2007 and was involved in a motor vehicle accident.[2]

36. S.L. never met or spoke with a Mr. Delaney.

37. S.L. never spoke to anyone from Riverway Development, had never been warned by others not to trespass on Riverway Development property, and had never walked or wandered through the Lookaway neighborhood or Riverway Development property.

38. Ms. Arnold never saw S.L. on the vacant lot next to Ms. Arnold's home before July 3, 2010 and never saw S.L. wandering the lot on the day S.L. was arrested.

What Ms. Arnold told the Internal Affairs Division Investigators

39. Without verifying that any of the reasons were true, Ms. Arnold told the Police Department Internal Affairs Division investigators that S.L was arrested because:

a. S.L. refused to provide a contact phone number;

b. S.L. was unable to locate a ride;

c. S.L. was trespassing on property adjacent to Ms. Arnold's home; and

d. She (Ms. Arnold) believed S.L. was a missing person or a runaway, or on a drug binge, or off of her medication.

40. Ms. Arnold also told Internal Affairs investigators, falsely, that she had tried to contact Dan Mintz (her neighbor and the Riverway Development contact person) by telephone or

[2] The Police Department's records include Police Report no. 07-191488, prepared in 2007 in connection with Mr. Delaney's motor vehicle accident. Because of the report, Mr. Delaney's name and other information are stored in and accessible through the Police Department's I/Lead computer system. The evidence does not demonstrate whether Ms. Arnold or Officer Lorthridge had personal knowledge of Mr. Delaney, or obtained information about him through the Police Department's I/Lead system or other records.

at home, to advise him that S.L. was arrested for trespassing, and to advise him that Riverway Development was the victim of the trespass.

41. Sgt. Richmond Lingard, who is employed by the Police Department, resides at 726 Lookaway Court, in the same cul-de-sac as Ms. Arnold. Ms. Arnold told Internal Affairs investigators, falsely, that Sgt. Lingard had warned S.L. not to trespass. Sgt. Lingard has never met S.L. and does not know who she is. No one from Riverway Development, including Mr. Mintz, had ever asked Sgt. Lingard to warn or arrest trespassers, or to warn S.L. about or arrest her for trespassing.

42. S.L. had never been homeless or considered to be a missing person.

43. S.L. was not taking any medication or drugs at the time of her arrest, and was not "off of" any medication.[3]

44. Ms. Arnold denied to Internal Affairs investigators that she had viewed the police report relating to S.L.'s arrest, Report No. 10-037247: "I don't recall ever pulling it up…. I don't know if I would ever have seen the report. There was no reason for me to even see it. I would not pull it up." But the Police Department's I/Leads viewer history shows that on August 18, 2010—12 days before her Internal Affairs interview—Ms. Arnold logged into the system and viewed the report from 7:32:07 to 7:34:22.

Ms. Arnold's Hearing Before the St. Louis Board
of Police Commissioners, and Subsequent Proceedings

45. Seeking to terminate her from its employment, the Police Department filed five charges and specifications against Ms. Arnold for:

1) arresting S.L. without probable cause on July 3, 2010;
2) creating a false police report relating to the arrest of S.L.;

[3] No evidence demonstrates that S.L. was required to be taking medications on July 3, 2010. We infer from the totality of the record that she did not need to be.

3) altering the location of S.L.'s arrest;
4) conducting herself in a manner contrary to acceptable conduct and bringing discredit to the Police Department; and
5) making false statements to the Police Department's Internal Affairs investigators.

46. A hearing was held on August 8, 9, and 29, 2011, in the City of St. Louis by the St. Louis Board of Police Commissioners (the Police Board), presided over by a hearing officer, to determine whether Ms. Arnold was guilty of the charges and specifications. The hearing was conducted in accordance with the provisions of Chapter 536 of the Revised Statutes of Missouri, and Rule 7, "Complaint and Disciplinary Procedures," of the Police Manual adopted by the Police Board. Ms. Arnold was represented by counsel. Procedures for the appearance of witnesses and production of documents were available to the parties, and the parties were afforded the opportunity to present evidence, cross-examine witnesses, and make argument. The proceedings were transcribed by a court reporter and videotaped.

47. The Police Board reviewed the entire record, including the transcript and exhibits, and on January 18, 2012 issued Findings of Fact and Conclusions of Law determining that Ms. Arnold was guilty of all charges and specifications.

48. The Police Board then took up the penalty determination and on March 5, 2012, issued its Findings of Fact and Conclusions of Law in which it dismissed Ms. Arnold from employment with the Police Department.

49. Ms. Arnold sought contested case, judicial review in the City of St. Louis Circuit Court. The court dismissed her case on June 2012, because she did not timely file it.

Conclusions of Law

We have jurisdiction. § 590.080.2, RSMo.[4]

The Director is responsible for issuing and disciplining the licenses of Missouri peace officers. § 590.020, .030, and .080, RSMo. When the Director files a complaint with this Commission asking us to determine there is cause for discipline, the Director bears the burden of proving, by a preponderance of the evidence, that the licensee committed an act for which the law gives the Director the authority to discipline the license. *See Kerwin v. Mo. Dental Bd*., 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012) (dental licensing board demonstrated "cause" to discipline by showing preponderance of evidence). A preponderance of the evidence is evidence showing, as a whole, that "'the fact to be proved [is] more probable than not.'" *Id*. at 230 (*quoting State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000)).

A preponderance of the evidence demonstrates that the Director has cause to discipline Ms. Arnold's peace officer license, as discussed below.

I. Preliminary Matter of Collateral Estoppel

For the reasons explained below, we conclude collateral estoppel prevents Ms. Arnold from contesting the findings made in the underlying Police Board proceeding against her. Those findings compose the bulk of the Director's evidence in support of his second motion for summary decision.[5]

[4] References to "RSMo" are to the Revised Statutes of Missouri (Supp. 2012), unless otherwise noted.

[5] The Director's second motion for summary decision contains 91 paragraphs. Paragraphs 1-7 are procedural background; 8 and 9 establish the identities of the parties; and 88-91 cover more procedural background. The remaining paragraphs, 10-87, are the Director's statements of substantive fact, covering the incidents that formed the basis for the Police Board's decision to dismiss Ms. Arnold.

A. The doctrine is applicable in these proceedings

Collateral estoppel "is used to preclude the relitigation of an issue that already has been decided in a different cause of action." *Brown v. Carnahan*, 370 S.W.3d 637, 658 (Mo. banc 2012) (citation omitted). "[O]ffensive collateral estoppel normally involves the attempt by a plaintiff to rely on a prior adjudication of an issue to prevent the defendant from challenging a fact necessary to the plaintiff's case and on which the plaintiff carries the burden of proof." *Id.* (citation omitted).

As relevant here, the Director was not a party to the action before the Police Board. But Missouri follows a variation of the offensive collateral estoppel doctrine, called offensive, "non-mutual" collateral estoppel, that may be invoked by a plaintiff—the party bringing the case—against a defendant, even if the plaintiff was not a party to the earlier proceeding. *In re Caranchini*, 956 S.W.2d 910, 912 (Mo. banc 1997). We see no reason why offensive, non-mutual collateral estoppel cannot equally apply from one administrative proceeding to another, subsequent one, and so consider the doctrine generally applicable in the proceedings before us.

B. Timeliness of invocation of the doctrine

Ms. Arnold has not challenged the timeliness of the Director's invocation of the doctrine in these proceedings. We take up the issue of timeliness on our motion and conclude the doctrine was timely invoked.

The Missouri Supreme Court has required that "to invoke offensive collateral estoppel, it must be pleaded timely in the plaintiff's petition." *Brown*, 370 S.W.3d at 659. The Court based its conclusion on *Consumer Fin. Corp. v. Reams*, 158 S.W.3d 792, 797 (Mo. App. W.D. 2005), in which the court of appeals based such requirement on the analogous requirement that *res*

judicata, collateral estoppel's close cousin, be pled in an answer pursuant to Missouri Supreme Court Rule 55.08. *Id.* at 797.

Rule 55.08, like the other Missouri Supreme Court Rules of Civil Procedure, applies to civil actions in circuit court. Those rules have no force of law before this Commission except as specifically made applicable by statute, *Wheeler v. Board of Police Comm'rs*, 918 S.W.2d 800, 803 (Mo. App. W.D. 1996), and *Dillon v. Director of Revenue*, 777 S.W.2d 326, 329 (Mo. App. W.D. 1989), or our duly promulgated regulations. Neither statute nor regulation makes Rule 55.08 applicable in proceedings before this Commission.

The *Brown* Court also based its pleading requirement on the idea that "a party 'should not be able to hold preclusion in reserve as a 'stealth defense' long after the time for raising substantive defenses has passed.'" 370 S.W.3d at 659 (*quoting Heins Implement Co. v. Missouri Highway & Transp. Comm'n*, 859 S.W.2d 681, 685 (Mo. banc 1993)).

No rule, statute, or regulation requires the doctrine to have been invoked in the Director's complaint. But we agree that to avoid unfairly prejudicing a party, offensive collateral estoppel should be invoked in the early stages of a proceeding and not reserved in stealth. The Director filed his motion for summary decision one month after the answer was filed, before the parties had filed anything else or engaged in any discovery, and well in advance of the hearing date. The Director invoked the doctrine in the early stages of the proceedings, and did not reserve it in stealth. Ms. Arnold was not prejudiced when the Director raised it in his motion.

We conclude the Director timely invoked the doctrine.

C. <u>The four collateral estoppel factors</u>

For collateral estoppel to apply, the Director must establish four factors in his favor:

- That the identity of the issues involved in the prior adjudication and the present action are the same;
- That the prior judgment was on the merits and is final;

- That the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication; and
- That the party had a full and fair opportunity in the prior adjudication to litigate the issue for which collateral estoppel is asserted.

Brown, 370 S.W.3d at 658-659; *Caranchini*, 956 S.W.2d at 912-913.

The Director established all four factors, which we address in turn below.

1. Identity of the issues

The issues in the two proceedings and facts on which they are based are the same. The issues before the Police Board were whether Ms. Arnold:

1) arrested S.L. without probable cause on July 3, 2010;
2) created a false police report relating to the arrest of S.L.;
3) altered the location of S.L.'s arrest;
4) conducted herself in a manner contrary to acceptable conduct and brought discredit to the Police Department; and
5) made false statements to the Police Department's Internal Affairs investigators.[6]

The Director pleads herein that Ms. Arnold:

1) unlawfully restrained S.L. on July 3, 2010;[7]
2) committed peace disturbance by threatening to "slit [S.L.'s] throat;"[8]
3) gave false information to others in order to implicate S.L. in a crime;[9]
4) committed acts of moral turpitude, while on active duty or under color of law, by arresting S.L. without probable cause or supporting evidence, giving false information in order to implicate S.L. in a crime, and lying to Police Department Internal Affairs Division investigators.[10]

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6 Findings of Fact, ¶ 47 and ¶ 49, above.
7 Complaint, ¶8.
8 *Id*., ¶10.
9 *Id*., ¶ 12.
10 *Id*. at ¶¶ 15-17, and 20.

The Police Board's and the Director's issues are identical, or virtually identical inasmuch as they overlap, and their proof rests on the same core of operative facts. The Director's allegations of fact mirror the findings of the Police Board.

The Director has established the first factor.

2. Final judgment on the merits

The Police Board's decision was on the merits and final. "On the merits" means that the decision was rendered not upon a preliminary or technical point, or by default, but after argument and investigation, and determination of which party was in the right. *Wilkes v. St. Paul Fire and Marine Ins. Co.,* 92 S.W.3d 116, 121 (Mo. App. E.D. 2002). A final judgment settles all of the issues in the case, and leaves nothing to be decided later. *Buemi v. Kerckhoff,* 359 S.W.3d 16, 20 (Mo. banc 2011). Finality also means that the decision is not subject to appeal. *Korte v. Curators of Univ. of Mo.,* 316 S.W.3d 481, 489 (Mo. App. W.D. 2010).

Here, the Police Board held a hearing on the record. Ms. Arnold was represented at the hearing by counsel, and the parties were permitted to call witnesses and offer exhibits, cross-examine witnesses, and make argument. The Police Board issued detailed factual findings and conclusions of law showing that Ms. Arnold was guilty of the charges and specifications against her, and subject to dismissal therefor. Its decision was not based upon a technical or procedural point, or issued by default, but a determination of who was in the right.

And the decision was final. The Police Board found Ms. Arnold guilty and imposed the penalty of dismissal. There was nothing left for the Police Board to do later. Ms. Arnold had the opportunity to appeal to circuit court, which she did. The circuit court case concluded in June 2012, more than a year ago, and no evidence of further appeal is before us.

The Director has established the second factor.

3. Identity of the party

Ms. Arnold was a party to the Police Board proceeding and is a party here. The Director has established the third factor.

4. Full and fair opportunity

We conclude Ms. Arnold had a full and fair opportunity to contest the issues in the Police Board proceedings.

Whether Ms. Arnold had a full and fair opportunity requires us to consider four elements: (1) whether she had a strong incentive to litigate the first action; (2) whether the second (present) forum affords her procedural opportunities not available in the first action; (3) whether the prior decision may be inconsistent with one or more prior decisions or judgments; and (4) whether the prior forum may have been substantially inconvenient to her. *See Bi-State Dev. Agency v. Whelan Security Co.,* 679 S.W.2d 332, 336-337 (Mo. App. E.D. 1984).

Ms. Arnold had a strong incentive to litigate the first action. The action involved whether she could keep her job. The first element is established.

Ms. Arnold has the same procedural opportunities in the present case as she did in the prior one. Similar to the Police Board, this Commission follows Chapter 536 in peace officer discipline cases, *see* § 590.080.6 (incorporating Chapter 621 procedures in peace officer discipline cases before the Commission) and § 621.135, RSMo (2000) (incorporating Chapter 536 procedures in cases before the Commission). The second factor is met.

Nothing in the record shows that there are any prior inconsistent decisions. The third factor is met.

Finally, the forum in the first action was not inconvenient. The Police Board sat in the City of St. Louis, where Ms. Arnold worked. The fourth factor is met.

We conclude Ms. Arnold had a full and fair opportunity to litigate her Police Board case.

The Director has satisfied all of the factors for application of offensive, non-mutual collateral estoppel, and we conclude that Ms. Arnold cannot challenge the findings upon which the Director relies, that is, the findings of the Police Board.

Ms. Arnold's suggestions in opposition to the Director's original motion for summary decision are disagreements with the findings of the Police Board, which she bases on some of the source evidence from that proceeding. Such argument and evidence are not sufficient to create a genuine dispute of material fact here.

Accordingly, we turn to application of the law to the undisputed facts.

II. The Director's bases for discipline

The Director relies on § 590.080.1 which provides in relevant part that:

> The director shall have cause to discipline any peace officer licensee who:
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> *****
>
> (2) Has committed any criminal offense, whether or not a criminal charge has been filed; [or]
>
> (3) Has committed any act while on active duty or under color of law that involves moral turpitude … [.]

A. Commission of criminal offenses

Subsection (2) of the statute provides for cause when a licensee has committed any criminal offense, regardless of whether a charge has been filed. The Director alleges that Ms. Arnold committed three criminal offenses: false imprisonment, peace disturbance, and making a false report. There is no evidence that charges have been filed. We conclude cause exists under this subsection because she committed all three offenses.

1. False imprisonment

"A person commits the crime of false imprisonment if he knowingly restrains another unlawfully and without consent so as to interfere substantially with his liberty." § 565.130.1, RSMo (2000).

Ms. Arnold and Officer Lorthridge knowingly restrained S.L. by directing her to wait on the porch of Ms. Arnold's house and not letting her leave. They also restrained S.L. by placing her in their police car and transporting her to the police station. The restraint was without S.L.'s consent and substantially interfered with her liberty.

The restraint was also unlawful. Ms. Arnold approved of S.L.'s arrest by Officer Lorthridge and watched the arrest take place, even though she (Ms. Arnold) knew there was no probable cause to arrest her. Specifically, Ms. Arnold knew that her son had invited S.L. into the house and that S.L. was not trespassing at the house, or anywhere in the neighborhood, and Ms. Arnold was not acting upon any third party's complaint of trespassing. Ms. Arnold also knew that the site of the arrest was outside of the City of St. Louis, that is, outside of the proper jurisdiction of the arresting officer, and knew that she (Ms. Arnold) would get into trouble for arresting S.L. outside of the City of St. Louis.

Ms. Arnold knowingly restrained S.L., unlawfully and without consent, in a manner that substantially interfered with S.L.'s liberty, committing the offense of false imprisonment.

2. Peace disturbance

"A person commits the crime of peace disturbance" when:

> (1) He unreasonably and knowingly disturbs or alarms another person or persons by:
>
> *****
>
> (c) Threatening to commit a felonious act against any person under circumstances which are likely to cause a reasonable person to fear that such threat may be carried out[.]

§ 574.010.1(1)(c), RSMo (2000).

The Director alleges Ms. Arnold committed this offense when she made a threatening statement to S.L.[11] In the police car, S.L. testified,

> [Ms. Arnold said that] I'm a white bitch and that she can't believe that I brainwashed her son, and that I had street smarts and he doesn't, and that if it was up to her she would have slit my throat already. I'm lucky that another police officer was there or she would have beat my ass[.[12]]

Ms. Arnold unreasonably and knowingly alarmed S.L. by threatening to carry out a felonious act against S.L. Specifically, Ms. Arnold said "that if it was up to her," she "would have slit [S.L.'s] throat already[.]" The circumstances were likely to cause a reasonable person to fear that such threat may have been carried out at some point: S.L. was 17 years old; S.L. was restrained by two police officers, including Ms. Arnold, on the porch and then in the police car, without lawful justification; S.L. was handcuffed; Ms. Arnold was bellicose in her interactions with S.L.; Ms. Arnold's behavior caused S.L. to believe that Ms. Arnold would have beaten her but for the presence of the other officer; and Ms. Arnold openly acknowledged before S.L. that she (Ms. Arnold) knew she was outside of her jurisdiction, and proceeded with S.L.'s arrest anyway. At the time Ms. Arnold made the statement, and by her own admission, she would have "slit [S.L.'s] throat already" if she could have, leaving open the possibility that the threat may have yet been carried out.

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[11] Complaint, ¶ 10.

[12] Finding of Fact ¶ 28, above.

As noted, the standard under § 574.010.1(1)(c) is "likely to cause a reasonable person to fear that such threat may be carried out,"[13] not "would be. " The Director has established it.

Ms. Arnold committed the crime of peace disturbance.

3. Making a false report

Finally, the Director alleges that Arnold committed the crime of making a false report under § 575.080.1(1), which provides:

> 1. A person commits the crime of making a false report if he knowingly:
>
> (1) Gives false information to any person for the purpose of implicating another person in a crime[.]

Ms. Arnold gave Officer Lorthridge false information to include in a police report, and did so for the purpose of implicating S.L. in a crime. Ms. Arnold's ultimate hope may have been to cover up her own bad and unlawful behavior, but such cover-up depended on implicating S.L. in a crime, which Ms. Arnold could only effect by giving false information.

Ms. Arnold committed the crime of making a false report.

4. Act committed while on active duty or under color of law, and involving moral turpitude

For cause under § 590.080.1(3), the Director points to Ms. Arnold's commission of the three criminal offenses discussed immediately above, and adds that she lied to Internal Affairs.[14]

We readily conclude that Ms. Arnold committed her acts while on active duty as a City of St. Louis police officer, or under color of law.

As for moral turpitude, the peace officer disciplinary statute does not define the phrase, but the concept exists in other disciplinary contexts and has been examined by Missouri courts. For example, in attorney disciplinary cases, the Supreme Court has "long defined moral turpitude

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[13] Emphasis added.

[14] Complaint, ¶ 20.

as 'baseness, vileness, or depravity' or acts 'contrary to justice, honesty, modesty or good morals.'" *In re Duncan,* 844 S.W.2d 443, 444 (Mo. banc 1993) (and cases cited therein). *See also Brehe v. Mo. Dep't of Elem. and Secondary Educ.*, 213 S.W.3d 720, 725 (Mo. App. W.D. 2007) (same definition used in discipline of teaching certificate).

We note that § 590.080.1(3) refers to "acts" of moral turpitude, not crimes of moral turpitude. Missouri courts have examined several types of crimes in license discipline cases and held that certain ones always constitute acts of moral turpitude, others may, and some never do. We conclude the courts' analyses in such cases is instructive for purposes of application of § 590.080.1(3). One such case is *Brehe,* in which the court explained the three classifications of crimes:

> 1. crimes that necessarily involve moral turpitude, such as fraud (Category 1 crimes);
> 2. crimes "so obviously petty that conviction carries no suggestion of moral turpitude," such as illegal parking (Category 2 crimes); and
> 3. crimes that "may be saturated with moral turpitude," yet do not necessarily involve it, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

213 S.W.3d at 725 (*quoting Twentieth Century Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9th Cir. 1954)). Category 1 crimes, such as murder, rape, and fraud, are invariably crimes of moral turpitude, and Category 3 crimes require inquiry into the circumstances. *Brehe*, 213 S.W.3d at 725.

Ms. Arnold's bad acts do not fall within Category 1, and are not "petty" crimes that fall within Category 2, so we look at the circumstances. We concluded above that Ms. Arnold committed the crimes of false imprisonment, peace disturbance, and making a false report. These offenses were committed against and at the expense of her son's 17-year-old girlfriend, who was at Ms. Arnold's house by invitation. No evidence suggests S.L. was committing crimes of any sort, let alone the crime of trespassing as claimed by Ms. Arnold, nor even behaving

inappropriately at the time of her encounter with Ms. Arnold. On the other hand, the evidence shows Ms. Arnold threatened to slit S.L.'s throat and was otherwise bellicose in her interactions with S.L., aware that her own actions were unjustified and unlawful, and prominently displayed and exercised her police authority for her own, private purposes.

Ms. Arnold also lied to the Police Department's Internal Affairs investigators to further cover her misdeeds: falsely claiming that S.L. was trespassing near Ms. Arnold's home, that others had complained about trespassing in the neighborhood, that S.L. was uncooperative by not providing a contact phone number, that S.L. was unable to locate a ride, and that S.L. was a missing person or runaway, or on a drug binge, or off her medication. Ms. Arnold also denied to investigators that she had reviewed the police report relating to S.L.'s arrest, when the Police Department's computer system shows Ms. Arnold did.

Such acts by a police officer are easily categorized as base, vile, and depraved, and contrary to justice, honesty, modesty or good morals. A police officer must administer, not thwart and pervert, justice.

Ms. Arnold committed acts while on active duty or under color of law, that involved moral turpitude. Cause for discipline therefore exists under § 590.080.1(3).

Conclusion

The Director has cause to discipline Ms. Arnold's peace officer license, under § 590.080.1(2) and (3).

We cancel the hearing presently set for December 10, 2013.

SO ORDERED on November 19, 2013.

\s\ Alana M. Barragán-Scott
ALANA M. BARRAGÁN-SCOTT
Commissioner